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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-7031

JESSE THURMAN FOWLER,
Petitioner,

v.

STATE OF NORTH CAROLINA
Respondent.

On Writ of Certiorari To The
Supreme Court of The United States

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BRIEF AMICUS CURIAE

The National Prisoners' Rights Project sponsored by the National Conference of Black Lawyers requested and received consent of the attorneys for both petitioner and respondent to file a brief *amicus curiae* in this case. These letters of consent have been filed with the Clerk of the Court.

The interest of the National Conference of Black Lawyers and its National Prison Project arises from the fact that its organizational purpose is to develop unique, legal remedies to insure the effective implementation of the just demands of Black people for legal, economic and social protection.

In the instant case, petitioner, a Black man, has raised issues concerning the constitutionality of the mandatory death sentences procedures of North Carolina. The Court's resolution of these and other related issues could determine the life or death of the peti-

tioner and another forty persons now under sentence of death in North Carolina pursuant to the challenged procedure. Given the national significance of the issues raised coupled with the fact that a large number of prisoners on Death Row in North Carolina and across this Nation have historically been Black, the National Conference of Black lawyers files this brief *amicus curiae* with the Court.*

SUMMARY OF ARGUMENT

The mandatory penalty of death for first-degree murder and other crimes in North Carolina is a cruel and unusual punishment, because it violates the Due Process Clause of the Fourteenth Amendment. The Cruel and Unusual Punishment Clause of the Eighth Amendment was modeled after the language contained in the English Bill of Rights enacted in 1689; one of the primary purposes of the English provision was to ban severe sanctions which were arbitrarily and discriminatorily imposed by either the legislature or judiciary.[1] Upon cursory inspection, the judicially fashioned mandatory death sentence scheme of North Carolina might appear capable of even-handed application. However, one year ago of the then twenty-one persons awaiting execution in North Carolina, fifteen of those on Death Row were Black, five were white

* The National Conference of Black Lawyers wishes to acknowledge the support and endorsement it received in filing this brief from the SOUTHERN POVERTY LAW CENTER, INC. located in Montgomery, Alabama and its General Counsel, Joseph J. Levin, Jr.

[1] Granucci, *"Nor Cruel and Unusual Punishments Inflicted": The Original Meaning*, 57 CALIF. L. REV. 839, 845-846 (1969).

and one was an American Indian.[2] It might be argued that these statistics alone establish a *prima facie* case of purposeful discrimination on the part of the State. Additional evidence consisting of statistics, studies and reports will demonstrate that there exists a differential sentencing pattern correlated with racial background and that a disproportionate number of Blacks receive sentences of death. Consequently, there must develop a strong, almost inescapable, inference that the mandatory death sentence procedure of North Carolina will perpetuate an historic, institutionalized pattern of discrimination in the imposition of the death penalty.

In addition to the constitutionally intolerable method of administering the sentence of death, the execution itself constitutes cruel and unusual punishment as prohibited by the Eighth Amendment. The mode of executing a death sentence in North Carolina consists of "causing the . . . felon to inhale lethal gas of sufficient quantity to cause death . . . ."[3] This procedure which causes physical discomfort and pain prior to actual death as well as the mental anguish and suffering which accompany survival while under sentence of death[4] are inconsistent with human dignity which is a basic concept underlying the Cruel and Unusual Punishment Clause.[5]

This case presents with striking clarity the fun-

[2] King, "Death Rows: 44 May Avoid Execution," *New York Times*, December 30, 1973, p. 42, col. 1.

[3] N.C. Gen. Stat. §15-188.

[4] *Furman v. Georgia*, 408 U.S. 238, 288 (1972).

[5] *Trop v. Dulles*, 356 U.S. 86 at 100 (1958).

damental contradiction between constitutional principle and the process by which a state statute operates as a tool of racial discrimination. The issue is whether this Court will compel compliance with its decision in *Furman v. Georgia*, 408 U.S. 238 (1972), or endorse a system of justice which degrades and dehumanizes Blacks by negating their most basic human right—the right to survive.

ARGUMENT

I. THE IMPOSITION AND CARRYING OUT OF THE SENTENCE OF DEATH FOR THE CRIME OF MURDER UNDER THE LAW OF NORTH CAROLINA CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT WITHIN THE MEANING OF THE EIGHTH AMENDMENT AS APPLIED TO THE STATES BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

In order to establish the procedural posture of this case, it is necessary to briefly outline the sequence of events which resulted in petitioner filing his application for review of this case with the Court. This case and its companion cases in which certiorari has either been granted or is pending[6] illustrate a variety of methods whereby retentionist[6.1] states have attempted

[6] *Dilliard v. North Carolina*, O.T. 1973, No. 73-
Crowder v. North Carolina, O.T. 1973, No. 73-
Henderson v. North Carolina, O.T. 1973, No. 73-
Jarrette v. North Carolina, O.T. 1973, No. 73-
Noell v. North Carolina, O.T. 1973, No. 73-
Eberheart v. Georgia, O.T. 1974, No. 74-5174

[6.1] See footnote 12, *infra*.

to reinstate the death penalty after *Furman* despite a strong national resistance to its frequent and routine application.

On June 29, 1972, this Court ruled in *Furman v. Georgia, supra*, that the death penalty as written and administered in the cases before the Court constituted cruel and unusual punishment. Following the decision in *Furman*, the Supreme Court of the state of North Carolina had an opportunity to review the constitutionality of its capital punishment laws which had been in effect prior to June 29, 1972 in the case of *State v. Waddell*, 282 N.C. 431, 194 S.E.2d 19 (1973). All seven of the Justices of the Court agreed that the North Carolina statute which authorized imposition of the death penalty in the case of convictions for the crimes of first-degree murder, rape, first-degree burglary, and arson while also affording the jury the unlimited discretion to recommend the sentence of life imprisonment,[7] suffered from the same constitutional infirmity which this Court had diagnosed in *Furman*. As a curative measure, a majority of four Justices held that solely by amputation of the jury recommendation provision which had been added by legislative action of the North Carolina General Assembly in 1947 and 1949 the constitutional defect would be remedied. Thus the *Waddell* court, over the dissent of three Justices,[8] created a law which re-

[7] N.C. Gen. Stat. §14-17.

[8] A dissenting opinion stated: "BOBBITT, C.J., and HIGGINS and SHARPE, J.J., dissent as to the death sentence and vote to remand for imposition of a sentence of life imprisonment for the reasons stated in the dissenting opinion of Chief Justice Bobbitt in *State v. Jarrette*, N.C., 202 S.E.2d 731 (1974)" 203 S.E.2d at 9.

sembled a prior unamended version of the North Carolina death penalty statute by stating:

> (T)he punishment for rape, murder in the first degree, arson and burglary in the first degree is this: Upon the trial of any defendant so charged, the trial judge may *not* instruct the jury that it may in its discretion add to its verdict of guilty a recommendation that defendant be sentenced to life imprisonment. The trial judge should charge on the constitutent elements of the offense set out in the bill of indictment and instruct the jury under what circumstances a verdict of guilty or not guilty should be returned. Upon the return of a verdict of guilty of any such offense, the court *must* pronounce a sentence of death. *State v. Waddell*, 282 N.C. 431, 194 S.E.2d 19, at 28-29 (1973) (emphasis added).

Since January 18, 1973, the date when the *Waddell* procedures were handed down, and April 8, 1974, the date of the enactment of a new North Carolina death penalty statute,[9] forty-one persons have been sentenced to death in North Carolina.[10] As of the date of the filing of the *Fowler* petition, the state of North Carolina merited the infamous distinction of having sentenced to death one-third of the national total of 121 defendants condemned to death subsequent to the *Furman* decision.

Having granted certiorari in the *Fowler* case, this

[9] S.B. 157, Chap. 1201, 1973 Sess. (2nd Sess. 1974)

[10] For a list of the cases involving sentences of death, see footnote 5, p. 11 of the *Fowler* petition and footnote 28, pp. 29-31 of the *Dilliard* petition.

Court must squarely confront the central issue of the federal constitutionality of the North Carolina death sentence procedure enunciated by the *Waddell* court. It is significant to note that although 23 states have reinstated the death penalty by legislative action after *Furman*, only one state other than North Carolina has used judicial review as the method of accomplishing this purpose.[11] The importance of this Court's decision concerning the unique mandatory death sentence procedure operative in North Carolina subsequent to *Furman* can not be over emphasized, since the ruling issued by this Court could literally decide the life or death of the forty-one men and women under sentence of death in North Carolina pursuant to the challenged procedure.

A. THE PENALTY OF DEATH IMPOSED PURSUANT TO THE POST WADDELL SCHEME CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT BECAUSE IT IS IMPOSED IN A SELECTIVE AND ARBITRARY MANNER

It has long been established that the Eighth Amendment proscribes the legislative enactment or judicial imposition of cruel and unusual punishments. *Weems v. United States*, 217 U.S. 349, 366, 378-379, 382 (1910); *Trop v. Dulles*, 356 U.S. 86, 103-104 (1958) (plurality opinion of Chief Justice Warren); *Robinson v. California*, 370 U.S. 660 (1962); and *Furman v. Georgia*, 408 U.S. 238, 241 (1972) (concur-

[11] See *Fowler* petition footnotes 7, 8, 9 and 14 at pp. 12-15 and p. 19 for an exhaustive discussion of the various post *Furman* statutes authorizing the punishment of death.

ring opinion of Justice Douglas). The Cruel and Unusual Punishment Clause of the Eighth Amendment is made applicable to the States through the Due Process Clause of the Fourteenth Amendment. *Robinson v. California, supra; Furman v. Georgia, supra* at 257 (concurring opinion of Justice Brennan). The difficulty of defining with exactness and precision the meaning of the Cruel and Unusual Punishment Clause was apparent in the *Furman* decision. Although each of the Justices who formed the majority in *Furman* filed separate concurring opinions, and none joined in the opinion of any other, the common theme woven into the fabric of each opinion is that a system of capital punishment which is characterized by the arbitrary selectivity in the administration of the death penalty is unconstitutional. Death sentences which are "wantonly and . . . freakishly imposed," 408 U.S. at 310, under a scheme devoid of clear standards is violative of the Eighth and Fourteenth Amendments. The very evil against which the Eighth Amendment stands, namely, the arbitrary and capricious imposition of harsh penalties,[12] is inherent in the North Carolina procedure approved in the *Waddell* decision.

Whether the North Carolina procedure challenged in the *Fowler* petition can be viewed in any meaningful sense as capable of evenhanded, nondiscriminatory application is central to the resolution of the issues in this case. Careful scrutiny of this purportedly "mandatory" death sentencing system reveals that the same degree of discretion which the Court held constitution-

[12] Granucci, *"Nor Cruel and Unusual Punishments Inflicted": The Original Meaning*, 57 CALIF. L. REV. 839, 845-846 (1969).

ally impermissible in *Furman* permeates the North Carolina scheme. This conclusion is based upon three interrelating factors: (1) a developing body of statistical studies which document that "Black defendants are disproportionally subjected to this sanction (the death penalty) . . .",[13] (2) the sequence of events which resulted in the development of the *Waddell* procedure, and (3) certain characteristics of North Carolina law and practice.

The most compelling and persuasive body of evidence supporting Fowler's position that the death sentences imposed in North Carolina pursuant to the *Waddell* procedures are unconstitutional consists of numerous statistical studies which, when viewed as a whole, conclusively demonstrate that:

> Strong statistically significant differences in the proportions of blacks sentenced to death, compared to whites, when a variety of nonracial, aggravating circumstances are considered, permit the conclusion that the sentencing differentials[14] are the product of racial discrimination[15]

As early as 1941, researchers began to compile

[13] Wolfgang and Riedel, *Race, Judicial Discretion, and the Death Penalty*, 407 ANNALS 119 (1973).

[14] Differential means "a degree of statistical difference that was significant according to traditional probability statistics;" here the term means a "disproportionate frequency of Blacks sentenced to death in comparison to whites." Wolfgang, *The Social Scientist in Court*, 65 JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 239, 243 (1974).

[15] Wolfgang and Riedel, *Race, Judicial Discretion and the Death Penalty*, 407 ANNALS 119 (1973).

statistics on racial differentials in the use of the death penalty.[16] Since 1930, a national total of 3,859 persons have been executed for a variety of crimes.[17] Although Blacks represent only approximately 10 per cent of the United States population, 54.6 per cent of all executed persons have been Black or members of other racial minority groups.[18] Blacks represent 89.5 per cent of the 455 persons executed for the crime of rape alone.[19]

Broad generalizations about the significance of these statistics alone would not be reliable. For example, with limited empirical data available concerning the effect of racial factors on the criminal justice system prior to conviction, allegations concerning the discriminatory behavior of law enforcement officials

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[16] Johnson, *The Negro and Crime*, 217 ANNALS 93 (1941). Johnson collected data from 220 homicide cases in Richmond, Virginia from 1930-1939 and 330 homicides from 5 counties in North Carolina from 1930 to 1940. This data was distributed according to four possible offender-victim racial combinations, i.e. black offender/white victim, white offender/white victim, black offender/black victim and white offender/black victim. In the black offender/black victim category, there were 141 cases and only 8 sentences of life imprisonment and no death sentences. Out of the 22 cases of black offenders/white victims, 7 defendants received life imprisonment and 6 received death penalty. Johnson concluded: "Negro versus Negro offenses are treated with undue leniency, while the Negro versus white offenses are treated with undue severity." *Id.* at 98.

[17] Wolfgang and Riedel, *supra*, at 123.

[18] *Id.*

[19] *Id.*

would be difficult to maintain.[20] Without focusing on issues relating to the pre-conviction stage of adjudication, empirical evidence has revealed ". . . there are very distinct patterns of behavior which show that racial variables *are* influential in the imposition of the death penalty.[21] It is appropriate for this Court to take judicial notice of this body of empirical information in analyzing the effects of racial and nonracial factors on capital sentencing within the context of the North Carolina *Waddell* scheme.

Methodical and scientific investigation of racial disparities in sentencing for capital offenses has produced the most conclusive findings in studies concerning the crime of rape.[22] Researchers selected nonracial variables which, hypothetically, might explain differential sentencing patterns. However, data collected over several decades for the crime of rape indicates an institutionalized, systematic judicial norm of sentencing which discriminates against Blacks in the imposition and carryng out of the death penalty. For example, Elmer Johnson studied information on persons sentenced to death for rape in North Carolina

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[20] Wolfgang, *The Social Scientist in Court*, 65 JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 239, 240 (1974).

[21] Wolfgang and Riedel, *Race, Judicial Discretion and the Death Penalty*, 407 ANNALS 119, 122 (1973) (emphasis authors')

[22] Since 1930, 405 of 455 persons executed for rape were Black; and all of the executions were in Southern or border states or the District of Columbia. Bureau of Prisons, National Prison Statistics, *Capital Punishment 1930-1968*, Bulletin No. 45 (1969).

from 1909 to 1954.[23] Johnson discovered that selective factors influence the final outcome even after a capital offender has been committed to Death Row. Table 2 of the Johnson report shows "(o)nly 23.9 per cent of the forty one first degree burglars entering death row were executed, compared with 56.3 per cent of the 490 murderers and 55.6 per cent of the 126 rapists."[24] Another selective factor which the Johnson report identified was race; he found "Negroes represented 73.8 per cent of all death row inmates, 92.7 per cent of the first degree burglars, 88.7 per cent of the rapists, and 68.5 per cent of the murders."[25] The report concluded that the administration of capital punishment in North Carolina during the period studied was characterized by the absence of "consistency, certainty and principles."[26]

Professor Marvin Wolfgang conducted a statistical investigation to determine the relationship between race and sentencing for rape in eleven Southern and border states where rape was a capital offense.[27] Using an elaborate research design including many variables unrelated to race, Wolfgang tabulated data from seven of the eleven states studied over a twenty year period. The findings and conclusions were uniform in all of the states.

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[23] Johnson, *Executions and Commutations in North Carolina* in BEDAU, THE DEATH PENALTY IN AMERICA, 452 (Rev. ed. 1967)

[24] *Id.* at 454.

[25] *Id.* at 463.

[26] *Id.*

[27] Wolfgang, *supra*, at 239.

> (B)lack defendants whose victims were white were sentenced to death approximately eighteen times more frequently than defendants in any other racial combination of defendant and victim. The probability of such a relationship between sentence of death and black defendants with white victims was, by chance alone, less than one out of a thousand.[28]

Studies have been conducted in various states involving crimes other than rape.[29] Although the approach has been "fragmentary", the results of this information, when viewed collectively, uniformly indicate that "blacks are disproportionately sentenced to death."[30] Thus this Court should declare the North Carolina death sentence procedure unconstitutional, because the sentencing scheme continues to perpetuate an historic pattern of discrimination in the imposition of the death penalty.

Another obvious constitutional flaw in the *Waddell* procedure concerns the fact that, between 1949 when the recommendation section was added to the North Carolina punishment statute and 1974 when the state legislature enacted a new post-*Furman* death sentencing procedure, unknown numbers of men and women convicted of capital offenses fortuitously escaped death by operation of the jury's discretion. Other less fortunate individuals who were convicted of com-

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[28] *Id.* at 242.

[29] See Wolfgang and Riedel, *supra*, footnote 24, p. 124 citing individual state studies.

[30] *Id.*

mitting identical crimes were not selected to survive. It cannot be argued that this totally capricious selection process is outside of the scope of the *Furman* decision. Apparently unable to reconcile the disparate treatment of the class of convicted felons randomly selected to survive and the class of felons who were not recipients of this beneficial treatment, the North Carolina Supreme Court conveniently ignored this issue when it abolished the escape hatch mechanism of the recommendation procedure in *Waddell*. Similarly, the class of all felons convicted of capital crimes after the *Waddell* decision and while this procedure was in effect were arbitrarily targeted by the North Carolina Court as not worthy to survive.

Clearly the judicial severance of the recommendation clause in the pre-*Furman* North Carolina capital punishment scheme could not produce a death sentence procedure free of constitutional defects. The *Waddell* procedure simply underscores the basic impropriety of the pre-*Furman* laws, because the death penalty would continue to be imposed in an arbitrary, and therefore, unconstitutional fashion.

It is appropriate at this juncture to consider whether the elimination of the recommendation section of the pre-*Furman* North Carolina statutes authorizing capital punishment effectively sealed off the escape hatch mechanism and created a uniform, mandatory sentencing scheme. Analysis discloses that the method of administering criminal justice in North Carolina continues to provide avenues of less conspicuous escape from the death penalty at early stages of the process. In North Carolina, as in many other jurisdictions, the prosecutor is accorded wide discretion over the exer-

cise of his authority;[31] he is obligated to "prepare the trial dockets (and) prosecute in the name of the State all criminal actions requiring prosecution in the superior court and district courts of his district." N.C. Gen. Stat. §7A-61 (1971 Cum. Supp.). Generally, the courts have been reluctant to subject the exercise of the prosecutor's discretion to judicial review except in cases of clear and flagrant abuse.[32] The North Carolina Supreme Court in *State v. Jarrette*, 284 N.C. 625, 202 S.E.2d 721, 742 (1974) declared: "the Constitution of the United States does not require a state, in the enforcement of its criminal laws, so to hedge its prosecuting attorney about with 'guidelines' that he becomes a mere automation, acting on the impulse of a computer and treating all persons accused of criminal conduct exactly alike."

There is no effective procedure to review the prosecuting attorney's decision not to seek prosecution; nor can his decision concerning what level of criminal culpability to charge be subjected to any rigorous standard in any forum. The prosecutor is not compelled by any legal standard to charge one of the statutorily enumerated capital offenses based on any given set of facts. Because a local prosecutor is often a product of the community he serves, "he is in a position to adjust prosecutorial policy to local conditions."[33] Consequently, the North Carolina prosecutor

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[31] Miller and Remington, *Procedures Before Trial*, 339 ANNALS 111, 113-120 (1962).

[32] *Id.*

[33] PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS (1967), p. 75.

may "without violating his trust or any statutory policy . . . refuse to (seek) the death penalty no matter what the circumstances of the crime." *Furman v. Georgia, supra* at 314 (concurring opinion of Justice White). Under the *Waddell* procedures, an arbitrary decision of the prosecutor could determine the life or death of an accused man.

The magnified importance of prosecutorial discretion within the context of the *Waddell* "mandatory" capital punishment scheme and the increased potential for this discretion to deteriorate into mere random selection is evident in the area of plea bargaining. The extent to which plea bargaining operates in capital cases in North Carolina is not known, but on a national average an estimated ninety per cent of all criminal cases are resolved in this manner.[34] Plea bargaining is particularly appealing when a capital offense is charged, because a full trial would require a great deal of time to prepare. The North Carolina prosecutor has unbridled discretion to accept a plea to a lesser charge in a capital case. From the prosecutor's perspective, it might be in his interest to accept such an agreement to guarantee conviction. What is particularly offensive under the *Waddell* procedure is "(t)he possibility that innocent defendants might be induced to plead guilty to avoid the possibility of a harsh (mandatory death sentence) should they be convicted after trial."[35]

Other opportunities for selective enforcement of the "mandatory" death penalty are present in the North Carolina system. While the *Waddell* decision

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[34] *Id.* at 9.

[35] *Id.* at 113 (Appendix A)

may have been intended to curtail the jury's discretion in deciding who should receive the death penalty, it may have enhanced irregular, arbitrary and selective verdicts of acquittal. Rather than condemn an individual to death by returning a verdict of guilty on a capital charge, the jury might decide to return a verdict of guilty of a lesser included offense, or it might return a verdict of not guilty. Furthermore, the North Carolina Constitution gives to the Governor the absolute discretion to "grant reprieves, commutations, and pardons . . . for all offenses." Article III, §5(6). The Governor is empowered to exercise this clemency power "as he may think proper." *Id.* During a sixty year span from 1903 to 1963, the Governors of North Carolina liberally exercised the clemency power in over 65 per cent of the cases where the death sentence had been imposed.

Whatever the intent of the *Waddell* Court, the death sentence procedures created under the mandatory scheme can not insure uniform treatment of persons accused of capital offenses. The *Waddell* decision may have limited to some extent the discretionary power of those who sit in the jury box, but this power remains dispersed in other areas of the North Carolina criminal justice system. Some of the officials who continue to exercise virtually unlimited discretionary power over the imposition of the death penalty were not restricted in the exercise of this discretion by the Court's decision in *Waddell*. Therefore, the post-*Furman* North Carolina death penalty practices developed in *Waddell* should be declared unconstitutional.

B. REGARDLESS OF THE PROCEDURAL SYSTEM UNDER WHICH IT IS INFLICTED, THE IMPOSITION OF CAPITAL PUNISHMENT IS EXCESSIVELY CRUEL IN LIGHT OF CONTEMPORARY STANDARDS OF DECENCY AND DIGNITY ENSHRINED IN THE EIGHTH AMENDMENT

The force of the Eighth Amendment is not restricted to repugnant penalties and punishments which were common at the time the Amendment was adopted. *Weems v. United States*, 217 U.S. 349, 372 (1910). The scope of the Cruel and Unusual Punishment Clause is measured by the "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

At present, the death penalty is rarely imposed; and its selective application to certain segments of society may indicate a general unwillingness to accept the broad application of this sanction. The fact that minorities and other poor and powerless people consistently have represented the bulk of the Death Row population (See Justice Douglas' concurring opinion in *Furman v. Georgia, supra*, at 249) may raise issues of a "caste" aspect of law enforcement. 408 U.S. at 255. Justice Brennan indicated in his concurring opinion in *Furman* that arbitrary and selective application of an unusually severe sanction constitutes a denial of human dignity. 408 U.S. at 286. Moreover, existing data suggests that there is "no method available that guarantees an immediate and painless death." *Furman v. Georgia, supra* at 287. The physical harm inherent in any form of capital punishment coupled with the severe psychological implications of survival while

under sentence of death create a degrading and dehumanizing process inconsistent with notions of an enlightened and civilized society. At an earlier stage in this Nation's history, flogging, earcropping and banishment were all viewed as accepted forms of punishment. The interpretation of the Cruel and Unusual Punishment Clause of the Eighth Amendment as an expanding concept eventually resulted in the outlawing of all of these practices. This Court must now decide if there is any compelling societal interest outweighing considerations contemporary morality to justify the retention of capital punishment.

CONCLUSION

For these reasons, the Court should review the judgment and opinion of the North Carolina Supreme Court.

Respectfully submitted,

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